

## **INDIANA DEPARTMENT OF REVENUE**

### **REVENUE RULING #2004-01 ST**

June 28, 2004

**Notice:** Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

#### **ISSUES**

1. Sales/Use Tax – Application of Sales/Use Tax to Purchase, Storage, Use and/or Consumption of Tangible Personal Property Utilized in Generating Electric Power – Manufacturing Exemption

Authority: IC 6-2.5-5-3, IC 6-2.5-5-5.1, IC 6-2.5-1-27

The taxpayer requests the Department to rule whether or not the taxpayer's purchase, storage, use and/or consumption of tangible personal property used in an electric generating facility, including all power generation equipment and certain related consumables, such as syngas, is exempt from sales/use tax under the manufacturing exemption.

2. Sales/Use Tax - Application of Sales/Use Tax to Purchase, Storage, Use and/or Consumption of Tangible Personal Property Utilized in Generating Electric Power – Pollution Control Exemption

Authority: IC 6-2.5-5-30

The taxpayer requests the Department to rule whether or not the taxpayer's purchase, storage, use and/or consumption of tangible personal property used in an electric generating facility, including all power generation equipment, is exempt from sales/use tax under the pollution control exemption.

#### **STATEMENT OF FACTS**

The taxpayer is a developer and manufacturer of electric power generators. In cooperation with certain customers, the taxpayer is demonstrating its technology in an effort to provide electricity through a method that will be "cleaner" than traditional methods commonly utilized. The taxpayer's technology generates electric power using fossil fuels through an electrochemical reaction without combustion which is unlike

conventional fossil fuel power plants. By eliminating combustion, greater efficiencies are achieved while pollution is dramatically reduced.

In order to perform the dual purpose of providing customers with energy and to demonstrate its ability to generate cleaner energy more efficiently than current generation equipment, the taxpayer will install and operate syngas-fueled electric power generators at various sites. Specifically, the taxpayer has entered into a cooperative arrangement with an energy company and a federal government agency to develop a project using the taxpayer's electric power generating technology at an Indiana facility. Under the arrangement between the taxpayer and the energy company, the two parties will work together to provide energy at the Indiana facility. The Indiana facility is a seller of electricity. Under a subcontract between the Indiana facility and the taxpayer, the taxpayer will supply "cleaner" electricity to the Indiana facility. The emissions of SOx and NOx associated with the production of electricity from the taxpayer's units will be below current and anticipated future environmental standards.

Under the terms of the applicable subcontract with the Indiana facility, the Indiana facility will provide the facility site, interconnect equipment, utility support, fuel supply and agree to purchase power from the demonstrated use of the taxpayer's technology. The taxpayer's electric power generator will be installed in the Indiana facility and will deliver power into the Indiana facility's system through the interconnect provided by the Indiana facility. The Indiana facility will utilize the power produced by the taxpayer's electric power generator at the Indiana facility. The Indiana facility will be responsible for obtaining all licenses and permits or amendments to its current licenses and permits required for the installation and operation of the taxpayer's electric power generator.

Under the terms of the controlling agreements, the taxpayer's on-site facility will produce power using its electric power generator, specifically, a syngas-fueled power generator. The Indiana facility will provide the fuel and will receive a reimbursement from the taxpayer for the fuel cost, land lease and other costs incurred by the Indiana facility. In turn, the Indiana facility will take the electricity produced by the taxpayer's electric power generator and will provide the taxpayer with a price adjustment for the electricity cost. This price adjustment is based on the number of kilowatts produced at the taxpayer's facility and delivered to the Indiana facility. The Indiana facility will consume all of the electric power generated by the electric power generator and the taxpayer will be compensated for such electric power through the price adjustment clause of the operating agreement.

### **ISSUE #1 – DISCUSSION**

The taxpayer requests the Department to rule whether or not the taxpayer's purchase, storage, use and/or consumption of tangible personal property used in an electric generating facility, including all power generation equipment and certain related consumables, such as syngas, is exempt from sales/use tax under the manufacturing exemption.

IC 6-2.5-5-3(b) states:

Transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax if the person acquiring that property acquired it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property.

IC 6-2.5-5-5.1(b) states:

Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for direct consumption as a material to be consumed in the direct production of other tangible personal property in the person's business of manufacturing, processing, refining, repairing, mining, agriculture, horticulture, floriculture, or arboriculture. This exemption includes transactions involving acquisitions of tangible personal property used in commercial printing.

IC 6-2.5-5-5.1(a) and IC 6-2.5-1-27 provide that electricity is defined as tangible personal property.

Here, the taxpayer is producing electricity at the Indiana facility and selling the electricity to the Indiana facility. That being the case, the taxpayer's production of electricity falls within the ambit of the above exemption statutes entitling the taxpayer to purchase, store, use and/or consume tangible personal property that is directly used or consumed in direct production exempt from sales/use tax.

This conclusion remains valid regardless of the taxpayer's dual purpose of providing customers with energy and demonstrating its ability to generate cleaner energy more efficiently.

### **ISSUE #1 – RULING**

The Department rules that the taxpayer's purchase, storage, use and/or consumption of tangible personal property used in an electric generating facility, including all power generation equipment and certain related consumables, such as syngas, is exempt from sales/use tax under the manufacturing exemption to the extent it is directly used or consumed in direct production of electricity.

### **ISSUE #2 – DISCUSSION**

The taxpayer requests the Department to rule whether or not the taxpayer's purchase, storage, use and/or consumption of tangible personal property used in an electric generating facility, including all power generation equipment, is exempt from sales/use tax under the pollution control exemption.

IC 6-2.5-5-30 states in relevant part:

Sales of tangible personal property are exempt from the state retail tax if:

1. the property constitutes, is incorporated into, or is consumed in the operation of a device, facility, or structure predominantly used and acquired for the purpose of complying with any state, local, or federal environmental quality statutes, regulations, or standards; and
2. the person acquiring the property is engaged in the business of manufacturing, processing, refining, mining or agriculture.

It is clear then, for tangible personal property to be eligible for the environmental quality compliance exemption the tangible personal property must have been acquired for the purpose of complying with any state, local or federal environmental quality statute, regulation or standard. The taxpayer has not indicated that the purchase of its technology is required to comply with any environmental quality statute, regulation or standard at this time, hence, the tangible personal property used for this technology is not exempt from sales/use tax under the pollution control exemption (environmental quality compliance exemption).

### **ISSUE #2 – RULING**

The Department rules that the taxpayer's purchase, storage, use and/or consumption of tangible personal property used in an electric generating facility, including all power generation equipment, is not exempt from sales/use tax under the pollution control exemption (environmental quality compliance exemption).

### **CAVEAT**

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

Indiana Department of State Revenue